IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. Cr.Misc. Canc. of Bail Appl. No.6852/07
State Vs. Ram Charan
10.10.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri B.K. Sharma, PP for State.
Shri Manoj Choudhary for the accused-non-petitioners.

This order will dispose of the aforesaid matter seeking to cancel the bail granted to the accused non-petitioner by order of this Court, notice of which was issued by the Court suo-motu when the bail application No.4781/07 moved by co-accused Ram Kalayan was laid before me by the co-ordinate bench. It was pointed out to co-ordinate bench that the basis on which bail was granted to accused Ram Charan was factually incorrect. Bail application of Ram Charan was allowed by this Court on 29.6.2007

upon counsel for the petitioner making argument that though accused Ram Charan was arrested with his father Durga Lal on 6.4.07, Durga Lal has already been enlarged on bail by order of this Court dated 13.3.07 but he was still confined in jail. Investigation has been completed and challan has been filed and the trial is likely to take long. The learned Judge hearing the bail application of Ram Kalyan in these circumstances directed that his bail application be also placed before the bench which allowed the bail application of Ram Charan. This is how the bail application of Ram Kalyan was listed before me on 24.9.2007. In those facts, notice was issued to Ram Charan to show cause as to why bail granted to him on 29.6.2007 be not cancelled and he was

in the first instance summoned by bailable warrants in the sum of Rs.10,000/-. In response to the notice, Shri Manoj Choudhary, the learned counsel who originally appeared on his behalf in bail application put in his appearance and in fact filed an application to place on record his submissions.

Shri Manoj Choudhary, learned counsel for the accused non-petitioner contended that the bail application of the accused Ram Charan was allowed by the Court on 29.6.2007 on the premise that his father Durga Lal was having valid licence for cultivation of opium. Soon thereafter the counsel became busy in family matters as his father was admitted in the hospital for undergoing byepass surgery and he asked his clerk to

handover certified copy of the bail order to the client. It was only when he received the telephonic call from his client that at the time of filing of bail application by co-accused Ram Kalyan, his counsel Shri Ali Mohammad Khan discovered that a wrong fact has come to be stated in the bail order dated 29.6.2007. Learned counsel argued that he never made this argument before the Court and this has come to be inadvertently incorporated in that order as this fact was not mentioned by him in the bail application. He having come to know about the fact, again applied for obtaining certified copy of the order on 24.8.2007 and told the fellow advocate Shri Ali Mohammad Khan to bring this fact to the notice of Court because his younger brother Dr.

Rajesh Mahalawat had recently expired due to heart attack on 21.7.2007. On return from there, he also informed the Court about the fact that he had no mala fide intention nor was he aware of the mistake or else he would have immediately brought this fact to the notice of the Court.

On perusal of the order granting bail, it transpired that the counsel argued that even though recovery of 10 kg opium was made at one go under the same recovery memo but recovery was shown separately in three parts, (i) 4 kg. at the instance of father of the petitioner Durga Lal who holds licence to cultivate the opium, (ii) 3 kgs. at the instance of Ram Charan, the present accused non-petitioner and (iii) 3 kgs. at the instance of co-accused Ram Kalyan, the

servant of Durga Lal. Though the petitioner was arrested along with his father on 6.4.2007, he was still in jail but his father Durga Lal has already been enlarged on bail by coordinate bench of this Court vide order dated 13.3.2007. Tenor of the order thus clearly suggests that the Court was persuaded to accept the prayer of the petitioner for grant of bail only on consideration of the fact that co-accused Durga Lal at whose instance recovery of greater quantity of opium (4 kg) was made had already been enlarged on bail. I am not persuaded to accept the argument that this fact has come to be incorrectly stated in the order, for if it were to be so, why did the counsel not point it out to the Court even when the order was dictated in the

open Court. Not only that, I am also not inclined to accept the kind of explanation offered by the counsel that he remained unaware of this fact till it was discovered by another counsel when co-accused Ram Kalyan approached him for filing bail application on his behalf. It would be too innocent to believe such a naive plea that even when the counsel argued a bail application and the order is passed in his presence in open Court, he would remain oblivious of the fact as to what weighed with the Court while granting or refusing the bail application. It is still more difficult to believe that the counsel when he obtained certified copy and handed it over to his client, would still be unaware of the misstatement of fact

contained therein for more than two months till another counsel would point it out to the co-accused when he would approach him for filing bail application in the same FIR.

Reading the order of grant of bail clearly indicates that but for the factum of enlargement of Durga Lal on bail, the accused Ram Charan would in all probabilities not have been extended the benefit of bail pending trial and result could be otherwise. If this argument were not to be made before the Court, the Court could have possibly taken a different view than eventually it did.

While hearing the arguments in the Court, it is not expected of nor is it possible for, the Judge concerned to meticulously check all the augments with

reference to pleadings in the bail application. Even otherwise, law of pleadings is not strictly adhered to in criminal matters and many a times and it generally happens that the Court believes in what is stated by the learned counsel and it is the mutual regard of the Court for the lawyers and vice-versa that makes the functioning of the Court possible.

Upshot of the above discussion is that the bail application granted to the co-accused Ram Charan in FIR No.137/06, Police Station Harnawada-Sahaji, Distt. Baran for offences under Section 8/18 of N.D.P.S. Act is ordered to be cancelled. He is directed to forthwith surrender before the SHO Police Station Harnawada-Sahaji and in the event of his failure to do so, the SHO shall cause him to be

arrested and detained in jail.

The application stands disposed of accordingly.

RS **(Mohammad Rafiq),J.**